The Detroit News, a Division of The Evening News Association *and* Local 22, The Newspaper Guild, AFL-CIO. Case 7-CA-22267

30 April 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 30 January 1984 Administrative Law Judge Walter J. Alprin issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, The Detroit News, a Division of the Evening News Association, Detroit, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The judge inadvertently stated that the complaint issued 3 August 1963, that the Respondent provided the Union with wage information for 210 of the 211 unit employees, and that briefs were submitted to the judge 9 January 1984. We note that the complaint issued 3 August 1983, the Respondent provided wage information for 209 of the 210 unit employees, and the Respondent's brief to the judge was submitted 4 January 1984.

DECISION

STATEMENT OF THE CASE

WALTER J. ALPRIN, Administrative Law Judge. The charge was filed on June 17, 1983 and complaint issued on August 3, 1963. Hearing was held at Detroit, Michigan, on November 22, 1983,[1] and briefs were submitted on January 9, 1984. The issue presented is whether The Detroit News (Respondent) was required to comply with the demand of Local 22, The Newspaper Guild, AFL-CIO (Union) for the amount of wages paid a newspaper columnist member of the bargaining unit, such information having been provided for all other members of the unit.

On the entire record, including my observation of the witnesses, and after due consideration of the briefs submitted on behalf of the General Counsel, the Charging Party, and Respondent, I make the following

[1] All dates herein are 1983 unless otherwise specified.

FINDINGS OF FACT

I. JURISDICTION AND BACKGROUND

Respondent publishes, sells, and distributes a newspaper from its principal offices at Detroit, Michigan. It admits, and I hereby find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act (the Act), and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Since 1974 the Union has been exclusive bargaining representative for a unit consisting of all employees in Respondent's editorial department, excluding guards, supervisors, and confidential employees as defined under the Act, employees in Respondent's Washington, D.C. Bureau, and employees in other departments. Successive collective-bargaining agreements have been negotiated between Respondent and the Union as to rates of pay, wages, hours, and other terms and conditions of employment. The current contract is effective for 1 year from June 18, and contains a provision that Respondent may negotiate rates of pay above the minimum with employees, it being a common practice in the industry for newspaper publishers to pay key journalists above the contract minimums.

In anticipation of negotiations on the current collective-bargaining agreement, by letter dated April 11 the Union requested that, inter alia, Respondent provide it with the salaries of each member of the bargaining unit. Respondent was approached by Peter Waldmeir, a triceweekly columnist who is one of the most widely read of Respondent's journalists and one of the prominent Detroit personalities in the bargaining unit who is identified with Respondent. Because of personal reasons and as a matter of privacy, Waldmeir requested that his wage not be reported to the Union, though it had been made known, with the others, during negotiation of the preceeding 1980-1983 contract.

Waldmeir, as well as other bargaining unit employees, had from time to time been promoted by Respondent through advertising in connecting with its newspaper, in TV and radio advertising, in-house newspaper ads, and posters on billboards. They had also been encouraged to appear regularly on radio programs and to participate in charity and civic functions as representatives of Respondent. They have developed unique contacts and sources.

During December 1980, Respondent's chief competitor, the Detroit Free Press, attempted to hire Waldmeir away from Respondent's employ. The Free Press made a number of public announcements in its paper that Waldmeir was joining its staff. For reasons not revealed in testimony, Waldmeir did not leave Respondent's employ, and the Free Press made a public apology. Such attempts, however, are not uncommon in the newspaper industry. Both the Free Press and Respondent have hired writers and journalists from each other and from other newspapers. Respondent's executive editor testified that

newspapers want to know a journalist's current earnings before approaching him to avoid wasted effort and the embarassment of rejection.

II. UNFAIR LABOR PRACTICE

At the first negotiating session for the current collective-bargaining agreement, during the first week of June 1983, Respondent provided the Union with the requested wage information for 210 of the 211-member unit, refusing the information only as to Waldmeir. The only reason given by Respondent at the time was that Waldmeir requested his wage information not be provided to the Union and Respondent would withhold the information at the request of any unit employee. About 3 or 4 days later, representatives of Respondent and the Union met by chance in an elevator and Respondent's representative then stated the reason for not providing the information was both Waldmeir's request and the Respondent's fear that providing the information would make it easier for the Detroit Free Press, or other competitors, to hire Waldmeir away. At a later date the parties entered into a 1-year collective-bargaining agreement, until June 17, 1984, and negotiations for a further agreement to start in March or April of 1984.

III. DISCUSSION

It has long been recognized that an employer's obligation to bargain in good faith includes the duty to furnish relevant information upon request. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 156 (1956); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967). Wages of unit employees are data bearing directly on a mandatory bargaining subject, and are presumptively relevant, *NLRB Boston Herald-Traveler Corp.*, 210 F.2d 134, 136 (1st Cir. 1954) enfg. 102 NLRB 627 (1953); *Press Democrat Publishing v. NLRB*, 629 F.2d 1320, 1326 (9th Cir. 1980), and "a union's right to such information cannot be seriously challenged." *Woodworkers v. NLRB*, 263 F.2d 483, 484 (DC Cir. 1959). See also *NLRB v. F. W. Woolworth Co.*, 352 U.S. 938 (1956), revg. 235 F.2d 319 (9th Cir. 1956) in which the Supreme Court reversed the Circuit's refusal to enforce a Board Order requiring production of wage information.

The facts of required production and presumed relevance, however, do not result in an ipso facto violation where wage information is not supplied upon demand. The refusal to provide wage information has been held to constitute only evidence of bad faith, *Woodworkers v. NLRB* supra; *J. I. Case Co. v. NLRB*, 253 F.2d 149, 154–155 (7th Cir. 1958), enfg. as amended 118 NLRB 520 (1957), though once the relevance of the refused wage information is established, the refusal has been held to constitute a per se violation. *Curtis-Wright Corp. v. NLRB*, 347 F.2d 61, 69 (3d Cir. 1965), enfg. 145 NLRB 152 (1963).

The first issue is therefore the relevancy of Waldmeir's wage. The Board and the courts have held that wage information should be made available "without regard to its immediate relationship" to the agreement or to its "precise relevancy" to particular bargaining issues. *NLRB v. Whitin Machine Works*, 217 F.2d 593, 594 (4th Cir. 1954), enfg. 108 NLRB 1537, cert. denied 349 U.S. 905 (1955); *NLRB v. Fitzgerald Mills Corp.*, 313 F.2d 260, 265 (2d Cir. 1963), enfg. 133 NLRB 877 (1961). Contrary to Respondent's argument, the fact that a contract was later agreed to without the information does not evidence lack of relevance. *NLRB v. Yawman & Erbe Mfg. Co.*, 187 F.2d 947, 949 (2d Cir. 1951); *NLRB v. Fitzgerald Mills*, supra.

In this case the wage information was requested during negotiations for a new collective-bargaining agreement. Wages are a mandatory subject of collective bargaining, whether minimum wages, or wages in any other form. Further, article XX (4) of the contract then in effect provided that "An employee paid above the top minimum of his or her classification shall maintain the same dollar differential above the new top minimum . . . when minimums are increased." Annual increases were provided not only for the first 5 years of experience, which might not have applied to Waldmeir, but also for annual contract anniversaries, on June 18 of 1980, 1981, and 1982. Information on wages of unit employees would therefore be required in administering the then-current contract, to see that differentials were maintained. I find the request here to be for relevant information.

Respondent argues, in addition to the relevancy issue, that the unit member holds a "legitimate and substantial" interest in the privacy of his wage which may be asserted by Respondent on his behalf, and that Respondent itself has a legitimate and substantial interest in retaining the unit member in its employ which will be threatened by providing the employee's bargaining representative with wage information.

The "confidentiality" argument is fully disposed of by the holding in *NLRB v. Jaggars-Chiles-Stoval*, 639 F.2d 1344, 1347 (5th Cir. 1981), enfg. 249 NLRB 697 (1980). There it was wage information of nonunion unit employees which came into question, presenting if anything a stronger case for privacy. Noting that this circuit had already held that an employer had no confidentiality privilege to withhold from the union relevant wage data even where the Union's own employee-members refused to disclose the information, the court went on to cite *Vaca v. Sipes*, 386 U.S. 171 (1967) that "'the collective bargaining system as encouraged by Congress and administered by the NLRB of necessity subordinates the interests of an individual employee to the collective interests of all employees in a bargaining unit.'" The decision goes even further, finding that the wage rate of foremen and assistant foremen who performed unit work though not unit members would likewise have to be disclosed by the employer, since those individuals were paid a percentage above journeymen wages.

Respondent also fails to convince me that disclosure of Waldmeir's wage will lead to its loss of his services, that it has any inviolate right to those services, or that the possibility of such a loss clothes Respondent with the right to withhold relevant bargaining information. These arguments obviously were afterthoughts intended to bolster Respondent's true reason for its failure to provide the information—the request for personal reasons by a valued employee. Waldmeir is the superstar of Respond-

ent's columnists and reporters, and the highest paid. Even after his wage was reported to the Union during negotiation of the 1980 contract, Respondent repulsed an attempt by its chief competitor to hire Waldmeir away, belying its argument that dissemination of this information places it at any great risk. Even if such knowledge were essential, or even useful to a party seeking to hire Waldmeir away, I do not find Respondent is entitled to argue the existance of a property right in the services of an employee as will defeat the right of a bargaining agent to wage information. If Respondent wishes to insure sole use of Waldmeir's works it can, for a quid pro quo, contract with Waldmeir for exclusive service, rather than demanding protection at the expense of the statutory rights of the bargaining-unit representative.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. By refusing to provide Local 22, the Newspaper Guild, AFL–CIO, a labor organization within the meaning of Section 2(5) of the Act, with the amount of wages paid to all members of the Union's bargaining unit, Respondent has violated Section 8(a)(1) and (5) of the Act.

3. The aforesaid constitutes an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, The Detroit News, a Division of The Evening News Association, Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to provide Local 22, The Newspaper Guild, AFL–CIO, wage information regarding all members of that bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

(a) Provide Local 22, The Newspaper Guild, AFL–CIO, the wage information requested June 1983 regarding Peter Waldmeir.

(b) Post at its Detroit, Michigan facility copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board, and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board having found, after a hearing, that we violated the Federal law by refusing to bargain in good faith with the Union.

WE WILL, upon request of Local 22, The Newspaper Guild, AFL–CIO, provide relevant wage information regarding employee members of the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them under Section 7 of the Act.

THE DETROIT NEWS, A DIVISION OF THE
EVENING NEWS ASSOCIATION